

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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2-WAY COMPUTING, INC.,

Case No. 2:11-cv-00012-JCM-PAL

Plaintiff,

ORDER

v.

(Mtn to Seal – Dkt. #187)

NEXTEL FINANCE COMPANY, et al.,

(Mtn to Seal – Dkt. #199)

Defendants.

This matter is before the court on Plaintiff 2-Way Computing, Inc.’s Unopposed Motion for Leave to File Under Seal (Dkt. #187) and Defendants Nextel Finance Company’s, Sprint Solutions, Inc.’s, Sprint United Management Company’s, Nextel Boost of California, LLC’s, and Nextel Communications, Inc.’s (“Defendants”) Unopposed Motion for Leave to File Under Seal (Dkt. #199). The court has considered the Motions.

I. Plaintiff’s Motion to Seal (Dkt. #187).

Plaintiff requests an order pursuant to LR 10-5(b) granting it leave to file portions of its (a) Opposition to Defendants’ Motion in Limine to Preclude the Testimony of Plaintiff’s Expert Wayne E. Stark Regarding Literal Infringement of Claim 6 of the ‘797 Patent (Dkt. #189); and (b) Opposition to Defendants’ Motion to Exclude the Testimony of Michele M. Riley (Dkt. #188), including certain exhibits, under seal. Plaintiff asserts first that the Oppositions incorporate and attach material deemed confidential under the Protective Order (Dkt. #39) and Amended Protective Order (Dkt. #99) entered by the court.

Second, Plaintiff represents that, along with the Oppositions themselves, the following exhibits contain information related to the development and operation of the proprietary iDEN technology at issue in this lawsuit, including how devices that use iDEN technology operate:

- 1 ▪ Exhibit 1 to the Declaration of Cheryl Burgess: the opening expert report of
- 2 Wayne E. Stark;
- 3 ▪ Exhibit 2 to the Burgess Declaration: excerpts from the rebuttal expert report of
- 4 Anthony Acampora; and
- 5 ▪ Exhibit 3 to the Burgess Declaration: excerpts from the deposition transcript of
- 6 Wayne E. Stark.

7 Third, Plaintiff asserts that Exhibit 4 to the Burgess Declaration, the expert report of

8 Michele Riley, contains confidential financial information about Sprint's sale of the accused

9 products. Because of the confidential, proprietary, and private nature of these materials, Plaintiff

10 contends public disclosure could result in improper use and would put Sprint and non-parties

11 Motorola Mobility, Inc., and Motorola Solutions, at a competitive disadvantage.

12 In the Ninth Circuit, it is well-established that the "fruits of pretrial discovery are, in the

13 absence of a court order to the contrary, presumptively public." *San Jose Mercury News v.*

14 *United States District Court*, 187 F.3d 1096, 1103 (9th Cir.1999). However, where a party

15 shows good cause¹ for limiting access to documents and information produced during discovery

16 and attached to non-dispositive motions, the materials may be filed under seal. *See Kamakana v.*

17 *City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). The court finds Plaintiff has stated

18 good cause to file portions of the Oppositions and certain exhibits to the Oppositions, as set forth

19 above, under seal. *Id.* at 1179 (citing *Nixon v. Warner Commc's, Inc.*, 435 U.S. 589, 598

20 (1978) (compelling reasons where material could be a "vehicle for improper purposes,"

21 including the release of trade secrets)

22 Good cause to seal court records exist where the material might "become a vehicle for

23 improper purposes," including the release of trade secrets. *See Kamakana*, 447 F.3d at 1179

24 (citing *Nixon v. Warner Commc's, Inc.*, 435 U.S. 589, 598 (1978). The Ninth Circuit has

25 adopted the Restatement's definition of "trade secret," which includes any "formula, pattern,

26 ¹ Although Plaintiff argues the compelling reasons standard, good cause is the standard to apply

27 because motions in limine are, by definition, non-dispositive evidentiary motions. *See Luce v.*

28 *United States*, 469 U.S. 38, 40 n.2 (1984) (stating a motion in limine seeks "to exclude

anticipated prejudicial evidence before the evidence is offered").

1 device or compilation of information which is used in one's business, and which gives him an
2 opportunity over competitors who does not know or use it." *Apple Inc. v. Samsung Electronics*
3 *Co., Ltd.*, 727 F.3d 1214, 1222 (Fed Cir. 2013) (applying Ninth Circuit law and citing
4 Restatement (First) of Torts § 757 cmt. B). The court finds Plaintiff has made a particularized
5 showing of good cause to file the Oppositions and the exhibits specified above under seal.

6 **II. Defendants' Motion to Seal (Dkt. #199).**

7 Defendants seek an order permitting them to file portions of their Reply in Support of
8 Defendants' Motion in Limine to Preclude the Testimony of Wayne E. Stark (Dkt. #200).
9 Defendants assert that the court has previously determined that compelling reasons existed to
10 seal documents related to iDEN, and devices that use iDEN, work when it granted leave to file
11 documents under seal in connection with Defendants' Motions for Summary Judgment (Dkt.
12 ##157, 159). Defendants contend the redactions to the Reply also relate to the functionality of
13 the proprietary iDEN technology. For the reasons set forth above, the court finds Defendants
14 have stated good cause to file portions of the Reply under seal.

15 Accordingly,

16 **IT IS ORDERED:**

- 17 1. Plaintiff's Motion to File Under Seal (Dkt. #187) is GRANTED.
18 2. Defendants' Motion to File Under Seal (Dkt. #199) is GRANTED.

19 Dated this 29th day of January, 2015.

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21 
22 PEGGY A. LEE
23 UNITED STATES MAGISTRATE JUDGE
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